

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BAUSCH & LOMB INCORPORATED,

Plaintiff,

- v -

FAEZEH MONA SARFARAIZI, M.D.,

Defendant.

**NOTICE OF MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Case No. 09-cv-6041-MAT

PLEASE TAKE NOTICE that, upon the annexed Local Rule 56(a)(1) Statement of Material Facts, the Affidavit of Theodore Foos, sworn to on May 8, 2013, and the exhibits thereto, the Affidavit of Carolyn G. Nussbaum, sworn to on May 13, 2013, and the exhibits thereto, as supported by the accompanying Memorandum of Law dated May 13, 2013, Plaintiff and Counterclaim-Defendant Bausch & Lomb Incorporated (“B+L”) will move this Court before the Hon. Michael A. Telesca, at the United States Courthouse, 100 State Street, Rochester, New York 14614, at a date and time to be set by the Court, for an Order pursuant to Fed. R. Civ. P. 56:

1. Dismissing any claim by Defendant and Counterclaimant Faezeh Mona Sarfarazi, M.D. (“Dr. Sarfarazi”) for recovery of monetary damages for alleged reputational harm under any of her four counterclaims because, as a matter of law, the alleged reputational harm damages are speculative, and were not reasonably contemplated by the parties at the time of contract; and
2. Dismissing Dr. Sarfarazi’s first counterclaim for breach of contract, as a matter of law, to the extent it alleges a breach of section 7(a) of the License Agreement, entered into by the parties and dated as of July 18, 2003, because the counterclaim

is barred by an arbitration agreement entered into by the parties, and Dr. Sarfarazi's failure to comply with the contractual requirement to provide an opportunity to cure any material breach of the License Agreement.

PLEASE TAKE FURTHER NOTICE that B+L intends to file and serve reply papers.

Therefore, pursuant to Local Rule 7(b)(2)(B), B+L requests that the Scheduling Order on this motion provide that B+L shall have an opportunity to file and serve reply papers.

Dated: May 13, 2013
Rochester, New York

NIXON PEABODY LLP

By: s/ Carolyn G. Nussbaum
Carolyn G. Nussbaum
Terence L. Robinson, Jr.

1300 Clinton Square
Rochester, New York 14604
Tel: (585) 263-1000

*Attorneys for Plaintiff and Counterclaim-
Defendant Bausch & Lomb Incorporated*